

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

JEFFEREY JONES,)	
)	
Plaintiff,)	
)	
v.)	Case No. CIV-20-00775-JD
)	
JEFFREY CONE and RICHARD)	
FRANKLIN,)	
)	
Defendants.)	

ORDER ADOPTING REPORT AND RECOMMENDATION

Before the Court is Judge Suzanne Mitchell’s Report and Recommendation [Doc. No. 10] recommending that Plaintiff’s amended Application to Proceed in District Court Without Prepaying Fees or Costs [Doc. No. 5] be granted in part and denied in part. Judge Mitchell advised Plaintiff of his right to file an objection to the Report and Recommendation with the Clerk of Court by November 2, 2020, and that failure to timely object to the Report and Recommendation waives the right to appellate review of both factual and legal issues contained in the Report and Recommendation. [Doc. No. 10 at 6]. *See also* 28 U.S.C. § 636.

The record reflects that no objection to the Report and Recommendation has been filed by the deadline, and no extension of time to object has been requested. *See Moore v. United States*, 950 F.2d 656, 659 (10th Cir. 1991) (explaining that the Tenth Circuit’s “firm waiver rule” “provides that the failure to make timely objection to the magistrate[judge’s] findings or recommendations waives appellate review of both factual and legal questions”).

The Report and Recommendation recommends that Plaintiff pay \$50.00 (fifty dollars and no/100) per month toward the filing fee. [Doc. No. 10 at 5]. Plaintiff states that he can pay \$50.00 (fifty dollars and no/100) per month toward the filing fee. [Doc. No. 5 at 8], meaning that not only has Plaintiff not filed a timely objection to the Report and Recommendation, but he also does not appear to oppose its conclusion.¹

The Court therefore **ADOPTS** the Report and Recommendation [Doc. No. 10] in its entirety for the reasons stated therein. Plaintiff's amended Application to Proceed in District Court Without Prepaying Fees or Costs [Doc. No. 5] is **GRANTED IN PART** and **DENIED IN PART**. Plaintiff is **ORDERED** to make a \$50.00 (fifty dollars and no/100) payment to the Clerk of Court by **February 1, 2021**, and thereafter shall pay \$50.00 (fifty dollars and no/100) on or before the **first day of each month** until the full \$400.00 (four hundred dollars and no/100) in fees is paid in full.² The Clerk of Court shall not issue process until at least \$100.00 (one hundred dollars and no/100) has been paid toward the filing fees in this matter.

Plaintiff is warned that failure to comply with this Order or the required payment schedule may result in this case being dismissed without prejudice, which in certain circumstances may operate as a with prejudice dismissal as to certain claims or defendants.

¹ The Court notes that attempts to serve Mr. Jones with the Court's orders at Mr. Jones's address of record have failed. [See Doc. Nos. 11–13]. Plaintiff is responsible for notifying the Court of any change of address and “[p]apers sent by the court will be deemed delivered if sent to the last known address given to the court.” LCvR5.4(a).

² Plaintiff's [Doc. No. 5] supplements or amends [Doc. No. 2]. See Report and Recommendation [Doc. No. 10] at n.1. Accordingly, the Court has considered the two filings together, and this Order resolves both [Doc. No. 2] and [Doc. No. 5].

IT IS SO ORDERED this 28th day of December 2020.

A handwritten signature in black ink, appearing to read "Jodi W. Dishman", written over a horizontal line.

JODI W. DISHMAN
UNITED STATES DISTRICT JUDGE